IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Appeal No. 506/2001 Decided on 27.8.04

Surendra

Versus

State

Not approved for reporting

Date 27.8.04 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Appeal No. 506/2001

Surendra S/o Sri Munna Lal
R/o Chobal Chadh
P.S. Kotdwar
District Pauri Garhwal ……..Appellant.

Vs.

State of Uttaranchal ……..Respondent.

Sri Raman Kumar Shah learned counsel for the appellant.
Sri H.C. Pandey learned A.G.A.

Hon'ble Mr. Justice J.C.S.Rawat)

This is a criminal appeal under section 374 of the Code of Criminal Procedure (for short 'Code') against the judgment and order dated 4.5.2001 passed by the learned Addl. Sessions Judge-III, Dehradun in S.T.No.77/1997 convicting the appellant under sections 452/324 IPC and sentencing him to undergo RI for six months on each count. It was further directed that both the sentences would run concurrently. However, the appellant was acquitted of the charge under section 307 IPC.

2. Brief facts giving rise to the present appeal are that on 24.11.1993 at about 8PM in the night appellant-Surendra entered into the house of Moti Chandra and inflicted injuries on the person of Raj Nath with a sharp edged weapon; like – Khukri and broken glass bottle. The injured-Raj Nath was immediately taken to hospital and FIR was also got lodged before the P.S. Rishikesh. The injured-Ram Nath was medically examined. The investigation was entrusted to S.I. Sri Vijay Singh. The investigation was taken up as usual which culminated into the submission of the chargesheet.

3. The charges under section 307 & 452 IPC were framed against the appellant-Surendra. The appellant denied the charges and claimed the trial.

4. In order to prove its case the prosecution examined five witnesses. Raj Nath (PW1) was the injured person. Moti Chandra (PW2), who was the brother of the injured, was the eye witness of the occurrence. Dr. Vijay Ramola (PW3) examined the injured on the date of incident. He

supported the medical examination report (Ex.ka.2) of the injuries sustained by Raj Nath-victim. The prosecution adduced the evidence of Head constable Devendra Singh as PW4, who supported the G.D. entries (Ex.ka.9). S.I. Sri Vijay Singh (PW5) was the investigating officer of the case. Besides oral evidence the prosecution has also relied upon the documentary evidence such as written report (Ex.ka.1), chick FIR (Ex.ka.3), charge sheet (Ex.ka.6), medical examination report of the injuries (Ex.ka.2), site plan of the place where the incident took place (Ex.ka.5) and copy of the G.D. entries (Ex.ka.9).

5. The learned Addl. Sessions Judge-III on the basis of his appreciation of the evidence in the case held that the prosecution had proved its case against the appellant beyond reasonable doubt and sentenced him to undergo RI for six months under section 324 IPC and RI for six months under section 452 IPC. It was further directed that both the sentences would run concurrently. However, the appellant was acquitted of the charge under section 307 IPC.

6. I have heard Sri Raman Kumar Shah learned counsel for the appellant and Sri H.C. Pandey learned A.G.A.

7. The learned counsel for the appellant did not dispute the propriety of the finding of the learned Addl. Sessions Judge in regard to the guilt of the appellant who had been convicted for the offence punishable under sections 324, 452 I.P.C. and submitted that the occurrence took place about ten years ago and no useful purpose will be served if the appellant is to serve the sentence of imprisonment.

8. Learned counsel for the appellant then submitted that the appellant was in jail during the enquiry and trial for more than five months. Considering the facts of the case, the submissions of the learned counsel have force and the ends of justice will be satisfied if suitable modification in the sentence is made in this case.

9. For the reasons aforesaid, the appeal is partly allowed. Conviction of appellant under sections 452, 324 is affirmed. The sentence awarded is modified to the sentence already undergone.

(J. C. S. Rawat, J.)

Dated 27.08.2004
LSR